

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division**

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ATHENA CONSTRUCTION GROUP, INC.  
17877 Old Triangle Road  
Triangle, Virginia 22172

Plaintiff,

v.

WILLIAM SMITH III  
814 Creek View Road  
Severna Park, Maryland 21146

and

RE CONSTRUCTION, LLC  
814 Creek View Road  
Severna Park, Maryland 21146

Defendants

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Civil Action No.

**NOTICE OF REMOVAL**

Defendant William "Bill" Smith, hereby provides notice that the case *Athena Construction Group, Inc. v. William M. Smith, III and Re Construction, LLC*, Case No. 21-2013 filed in the Circuit Court of Prince William County, Virginia, has been removed to the United States District Court for the Eastern District of Virginia.

**AND NOW COME** Defendant William M. Smith, III, by and through undersigned counsel, Jeffrey J. Downey, Esq., hereby gives notice of the removal of the above captioned action to this Court and states:

1. On March 1, 2021, Athena filed its third retaliatory or “SLAPP” Complaint captioned *Athena Construction Group, Inc. v. William M. Smith, III and Re Construction, LLC*, Case No. 21-2013, in the Circuit Court for the County of Prince William, (hereafter “Virginia Complaint”), against the Defendant for possessing and turning over documents relating to Athena’s SBA fraud and False Claims Act violations. A copy of the Virginia Complaint is attached as Exhibit A.

2. According to Athena's Virginia Complaint, Defendant violated three criminal statutes relating to computer trespass and privacy by obtaining, possessing, reviewing, and turning over 1,000s of Athena documents allegedly containing confidential information, trade secrets, and proprietary finance information to the Federal Government in the ongoing False Claims Action docketed in the United States District Court for the District of Columbia at 1:18-cv-02080 (APM).

3. Athena also has included a common law claim for conspiracy.

4. Athena alleges that it has suffered damages in the amount of *at least* \$66,000.00, in addition to seeking recovery for litigation costs, attorneys’ fees and expenses, pre-judgment interest, post-judgment interest, and any other and further relief as the Court should deem just.

5. Further, Athena has asserted a claim under Va. Code § 18.2-500, which contains a provision for awarding treble damages at three times the value of actual damages.

6. Additionally, If the allegations in Athena’s lawsuit are true (they are not), and Defendants were somehow gaining a competitive advantage from the information contained in the hard drive, it is likely that Athena would be entitled to damages far in excess of the \$66,000 claimed.

7. For these reasons, it is clear that the amount in controversy of this case far exceeds \$75,000.00.

8. Athena's attempt to slide under the \$75,000.00 amount in controversy limit is a clearly an attempt to avoid federal jurisdiction and the fate of its other frivolous lawsuit, which was dismissed by the Honorable Michael S. Nachmanoff on February 23, 2018.

9. This Notice of Removal is Timely filed pursuant to 28 U.S.C. §1446(b) because it is filed within thirty (30) days of March 2, 2021, the date upon which Defendants were served with the Virginia Complaint.

10. This Court has original jurisdiction since the Defendants' actions would be protected under the False Claims Act as assisting in a False Claims Act investigation or proceeding.

11. Further, this Court has original jurisdiction, pursuant to 31 U.S.C. §3730(h) of the False Claims Act, which prohibits retaliation against individuals who report fraud to the Government.

12. The Virginia Complaint may be removed to this Court pursuant to 28 U.S.C. §1441(a), §1441(b), and §1446.

13. Additionally, this Court has jurisdiction pursuant to 28 U.S.C. §1332(a)(1) due to a diversity of citizenship between the Plaintiff (a Virginia citizen) and Defendants (both Maryland citizens) and in an amount in controversy exceeding \$75,000.00.

14. Removing Defendant is serving this Notice of Removal on Plaintiff's counsel on Milton C. Johns. Removing Defendant is also serving this Notice of Removal on the Clerk for the Circuit Court for the County of Prince William.


15. Promptly after filing in this Court and the assignment of a Civil Action Number, a Notice of Removal will be filed with the Circuit Court for the County of Prince William, Virginia, in accordance with 28 U.S.C. §1446(d),

WHEREFORE, Defendant William M. Smith, III hereby removes this action to the United States District Court for the Eastern District of Virginia.

**Respectfully submitted:**

**THE LAW OFFICE OF JEFFREY J. DOWNEY, P.C.**

By:

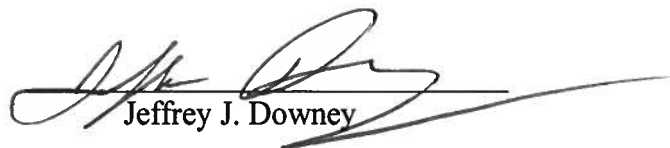
  
Jeffrey J. Downey, Esq., Bar No. 31992  
The Law Office of Jeffrey J. Downey, P.C.  
8270 Grennsboro Drive, Suite 810  
McLean, VA 22102  
(703- 564-7357 - phone)  
(703 – 883-0108 – fax)  
Email: jdowney@jeffdowney.com

*Attorney for Removing Defendant*

**Certificate of Service**

I hereby affirm that on this 31<sup>st</sup> day of March, 2021, a copy of this Notice of Removal, with attachments, was served upon below referenced counsel via the Court's electronic filing system:

Milton C. Johns  
Executive Law Partners, PLLC  
4000 Legato Road, Suite 1100  
Fairfax Virginia  
T 571-500-1010  
Email: [mjohns@xlpplle.com](mailto:mjohns@xlpplle.com)  
*Counsel for Plaintiff*

  
Jeffrey J. Downey

Exh. A

**COMMONWEALTH OF VIRGINIA** MAKE RETURN ON THIS COPY



**PRINCE WILLIAM CIRCUIT COURT**  
Civil Division  
9311 LEE AVENUE ROOM 314  
MANASSAS VA 20110

Virginia:  
In the PRINCE WILLIAM CIRCUIT COURT

Proof of Service

Case number: 153CL21002013-00  
Service number: 002  
Service filed: March 01, 2021  
Judge: TCH

Served by: SPECIAL PROCESS SERVER  
Style of case: ATHENA CONSTRUCTION GROUP, INC vs WILLIAMS SMITH III  
Service on: RE CONSTRUCTION, LLC  
814 CREEK VIEW ROAD  
SEVERNA PARK MD 21146

Attorney: JOHNS, MILTON C  
4000 LEGATO ROAD ST 1100  
571-500-1010  
FAIRFAX VA 22033

Instructions: COMPLAINT

Returns shall be made hereon, showing service of Summons issued Tuesday, March 02, 2021 with a copy of the Complaint filed Monday, March 01, 2021 attached.

Hearing date :  
Service issued: Tuesday, March 02, 2021

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For Sheriff Use Only

**COVER SHEET FOR FILING CIVIL ACTIONS**  
COMMONWEALTH OF VIRGINIA

Case No. 21-2013  
(CLERK'S OFFICE USE ONLY)

PRINCE WILLIAM

Circuit Court

ATHENA CONSTRUCTION GROUP, INC.

v./In re:

WILLIAM SMITH III

PLAINTIFF(S)

DEFENDANT(S)

RE CONSTRUCTION, LLC

I, the undersigned ☐ plaintiff ☐ defendant ☐ attorney for ☐ plaintiff ☐ defendant hereby notify the Clerk of Court that I am filing the following civil action. (Please indicate by checking box that most closely identifies the claim being asserted or relief sought.)

**GENERAL CIVIL**

**Subsequent Actions**

- ☐ Claim Impleading Third Party Defendant
- ☐ Monetary Damages
- ☐ No Monetary Damages
- ☐ Counterclaim
- ☐ Monetary Damages
- ☐ No Monetary Damages
- ☐ Cross Claim
- ☐ Interpleader
- ☐ Reinstatement (other than divorce or driving privileges)
- ☐ Removal of Case to Federal Court

**Business & Contract**

- ☒ Attachment
- ☐ Confessed Judgment
- ☐ Contract Action
- ☐ Contract Specific Performance
- ☐ Detinue
- ☐ Garnishment

**Property**

- ☐ Annexation
- ☐ Condemnation
- ☐ Ejectment
- ☐ Encumber/Sell Real Estate
- ☐ Enforce Vendor's Lien
- ☐ Escheatment
- ☐ Establish Boundaries
- ☐ Landlord/Tenant
- ☐ Unlawful Detainer
- ☐ Mechanics Lien
- ☐ Partition
- ☐ Quiet Title
- ☐ Termination of Mineral Rights

**Tort**

- ☐ Asbestos Litigation
- ☐ Compromise Settlement
- ☐ Intentional Tort
- ☐ Medical Malpractice
- ☐ Motor Vehicle Tort
- ☐ Product Liability
- ☐ Wrongful Death
- ☐ Other General Tort Liability

**ADMINISTRATIVE LAW**

- ☐ Appeal/Judicial Review of Decision of (select one)
- ☐ ABC Board
- ☐ Board of Zoning
- ☐ Compensation Board
- ☐ DMV License Suspension
- ☐ Employee Grievance Decision
- ☐ Employment Commission
- ☐ Local Government
- ☐ Marine Resources Commission
- ☐ School Board
- ☐ Voter Registration
- ☐ Other Administrative Appeal

**DOMESTIC/FAMILY**

- ☐ Adoption
- ☐ Adoption - Foreign
- ☐ Adult Protection
- ☐ Annulment
- ☐ Annulment - Counterclaim/Responsive Pleading
- ☐ Child Abuse and Neglect - Unfounded Complaint
- ☐ Civil Contempt
- ☐ Divorce (select one)
  - ☐ Complaint - Contested\*
  - ☐ Complaint - Uncontested\*
  - ☐ Counterclaim/Responsive Pleading
  - ☐ Reinstatement - Custody/Visitation/Support/Equitable Distribution
- ☐ Separate Maintenance
- ☐ Separate Maintenance Counterclaim

**WRITS**

- ☐ Certiorari
- ☐ Habeas Corpus
- ☐ Mandamus
- ☐ Prohibition
- ☐ Quo Warranto

**PROBATE/WILLS AND TRUSTS**

- ☐ Accounting
- ☐ Aid and Guidance
- ☐ Appointment (select one)
  - ☐ Guardian/Conservator
  - ☐ Standby Guardian/Conservator
  - ☐ Custodian/Successor Custodian (UTMA)
- ☐ Trust (select one)
  - ☐ Impress/Declare/Create
  - ☐ Reformation
- ☐ Will (select one)
  - ☐ Construe
  - ☐ Contested

**MISCELLANEOUS**

- ☐ Amend Death Certificate
- ☐ Appointment (select one)
  - ☐ Church Trustee
  - ☐ Conservator of Peace
  - ☐ Marriage Celebrant
- ☐ Approval of Transfer of Structured Settlement
- ☐ Bond Forfeiture Appeal
- ☐ Declaratory Judgment
- ☐ Declare Death
- ☐ Driving Privileges (select one)
  - ☐ Reinstatement pursuant to § 46.2-427
  - ☐ Restoration - Habitual Offender or 3<sup>rd</sup> Offense
- ☐ Expungement
- ☐ Firearms Rights - Restoration
- ☐ Forfeiture of Property or Money
- ☐ Freedom of Information
- ☐ Injunction
- ☐ Interdiction
- ☐ Interrogatory
- ☐ Judgment Lien-Bill to Enforce
- ☐ Law Enforcement/Public Official Petition
- ☐ Name Change
- ☐ Referendum Elections
- ☐ Sever Order
- ☐ Taxes (select one)
  - ☐ Correct Erroneous State/Local
  - ☐ Delinquent
- ☐ Vehicle Confiscation
- ☐ Voting Rights - Restoration
- ☐ Other (please specify)

☒ Damages in the amount of \$ 66,000.00 are claimed.

03/01/2021

DATE

Milton C. Johns

PRINT NAME

Executive Law Partners, PLLC

ADDRESS/TELEPHONE NUMBER OF SIGNATOR

9116 Center Street, Suite 204, Manassas, VA 20110

mjohns@xlppllc.com

EMAIL ADDRESS OF SIGNATOR (OPTIONAL)

☒ PLAINTIFF

☐ DEFENDANT

☐ ATTORNEY FOR

☐ PLAINTIFF  
☐ DEFENDANT

\*"Contested" divorce means any of the following matters are in dispute: grounds of divorce, spousal support and maintenance, child custody and/or visitation, child support, property distribution or debt allocation. An "Uncontested" divorce is filed on no fault grounds and none of the above issues are in dispute.

**VIRGINIA:**

**IN THE CIRCUIT COURT FOR PRINCE WILLIAM COUNTY**

**ATHENA CONSTRUCTION GROUP, INC.**

17877 Old Triangle Road  
Triangle, Virginia 22172,

Plaintiff,

v.

**WILLIAM SMITH III**

814 Creek View Road  
Severna Park, Maryland 21146,

and

**RE CONSTRUCTION, LLC**

814 Creek View Road  
Severna Park, Maryland 21146,

Defendants.

Civil Action No. 21-203

**JURY TRIAL DEMANDED**

**COMPLAINT**

COMES NOW, Plaintiff Athena Construction Group, Inc. ("Athena"), by counsel and for its Complaint against the Defendants states as follows:

**NATURE OF CASE**

1. This case arises out of Defendants' conspiracy, led by defendant Smith, to illegally, surreptitiously, and without authorization trespass upon, invade, and access Athena computers and/or computer networks for their own gain.

2. Defendants' unlawful conduct includes multiple violations of the Virginia Computer Crimes Act, Va. Code § 18.2-152.2 *et seq*; statutory business conspiracy, Va. Code §§ 18.2-499 and 18.2-500; and common law conspiracy.



## **PARTIES**

3. Athena is a Virginia corporation with a principal place of business at 17877 Old Triangle Road, Triangle, Virginia 22172.

4. Athena is an award-winning Service-Disabled Veteran-Owned, woman-owned, and socio-economically disadvantaged small business that provides general contracting and construction services for federal, state, and local governments and commercial entities.

5. Defendant William Smith III is an individual who purports to reside at 814 Creek View Road, Severna Park, Maryland 21146.

6. Smith was employed by Athena as Superintendent and Director of Operations from September 20, 2010 to January 18, 2016.

7. Defendant RE Construction, LLC (“RE Construction”) is a Maryland limited liability corporation, with a principal place of business at 814 Creek View Road, Severna Park, Maryland 21146.

8. According to its Facebook page, RE Construction is a “full service commercial contractor.” RE Construction is a former subcontractor of, and direct competitor with, Athena.

9. Upon information and belief, Smith was and continues to be employed by RE Construction. Smith is the father-in-law of, and cohabitates with, the owner of RE Construction, Ralph Ellis.

## **JURISDICTION AND VENUE**

10. This Court has subject matter jurisdiction pursuant to Va. Code Ann. § 17.1-513.

11. This Court may exercise personal jurisdiction over Smith pursuant to Va. Code Ann. § 8.01-328.1.A.3 because he has caused tortious injury in Virginia and § 8.01-328.1.B because he has used a computer or computer network located in Virginia.

12. This Court may exercise personal jurisdiction over RE Construction pursuant to Va. Code Ann. § 8.01-328.1.A.1 because RE Construction transacts business in Virginia and § 8.01-328.1.A.3 because it has caused tortious injury in Virginia.

13. Venue is proper in this Court pursuant to Va. Code Ann. § 8.01-262.3 because fact witnesses, plaintiff, and other evidence to the action is located in Prince William County; § 8.01-262.4 because the cause of action arose in Prince William County; and § 8.01-262.10 because Athena resides in Prince William County.

### **FACTS**

#### **A. Athena Terminates Smith as an Employee.**

14. On September 20, 2010, Athena employed Smith as Superintendent and, later, as Director of Operations.

15. On January 18, 2016, Athena terminated Smith from employment on the basis of poor performance.

16. As of the date of his termination, Smith's authority to access or use Athena information and property ceased.

#### **B. The Qui Tam Action and the "Found" Hard Drive.**

17. On January 10, 2017, approximately one year after his termination from Athena, Smith filed a *qui tam* action against Athena in the U.S. District Court for the Middle District of Pennsylvania ("Qui Tam Action").

18. On September 6, 2017, the U.S. Department of Justice declined to intervene in the Qui Tam Action.

19. On November 21, 2017, Smith filed an Amended Complaint and, on August 29, 2018, the Qui Tam Action was transferred to the U.S. District Court for the District of Columbia, to be presided over by U.S. District Court Judge Amit Mehta.

20. On September 28, 2018, Smith asked Judge Mehta, through counsel, for leave to file a Second Amended Complaint on the grounds that he had “found” a hard drive (“Hard Drive”) that contained information belonging to Athena that he believed would provide the basis for new claims.

21. According to Smith’s counsel, Smith “discovered the hard drive as part of a cleaning out of certain parts of his home” and it was later determined that the Hard Drive “contained information that he was provided by Athena while he was employed there during a backing up of information that the company was doing on its computers.”

22. On October 22, 2018, Judge Mehta permitted Smith to file a Second Amended Complaint under seal to allow for review by the U.S. Department of Justice.

23. On January 8, 2021, however, the Department of Justice again declined to intervene in the Qui Tam Action.

**C. Athena Files a Conversion and Detinue Action to Recover the Hard Drive.**

24. On November 13, 2019, Athena demanded that Smith return the “found” Hard Drive to Athena, based on Smith’s representation that the Hard Drive had been provided to him by Athena during his employment.

25. Smith refused to return the Hard Drive to Athena.

26. Accordingly, on December 13, 2019, Athena filed an action for conversion and detinue in this Court against Smith, seeking, among other things, the return of the Hard Drive (“Conversion/Detinue Action”).

27. On February 14, 2020, Smith and Athena resolved the Conversion/Detinue Action outside of court and, pursuant to this resolution, Smith surrendered the Hard Drive to Athena.

**D. Athena Conducts a Forensic Analysis of the Hard Drive and Uncovers Smith's Unlawful Acts.**

28. Upon receiving the Hard Drive from Smith, Athena commissioned an independent expert forensic analysis. This analysis resulted in the following findings:

- a. The Hard Drive did not originate from Athena;
- b. The Hard Drive contained over 13,000 Athena files, containing massive amounts of Athena's confidential information, trade secrets, and proprietary financial information ("Athena Files");
- c. The Athena Files were copied to the Hard Drive from an external source on January 25, 2016 and February 15, 2016—seven days and twenty-eight days, respectively, *after* Athena terminated Smith's employment.
- d. The Hard Drive had been repeatedly accessed throughout 2016, 2017, and 2018; and
- e. In addition to the Athena Files, the Hard Drive also contained QuickBooks backup data and "2017 Medical Dental Insurance" files belonging to RE Construction, the last of which had been deleted from the Hard Drive on April 2, 2018.

29. Accordingly, contrary to Smith's January 28, 2018 statement to Judge Mehta in the Qui Tam Action, the Athena Files were not "provided by Athena while [Smith] was employed there during a backing up of information that the company was doing on its computers."

30. Instead, Smith unlawfully trespassed upon, invaded, and accessed Athena's computers and/or computer networks on January 25, 2016, and February 15, 2016, copying the

Athena Files to the Hard Drive then in his possession, in violation of the Virginia Computer Crimes Act.

31. Smith committed this violation after his employment with Athena had been terminated, after any authorization he may have had to access Athena's computers and computer networks also had been terminated, and in breach of his severance agreement with Athena.

32. Smith then disclosed the Hard Drive—and the over 13,000 confidential, secret, and proprietary Athena Files contained thereon—with RE Construction personnel, including, but not limited to, Ralph Ellis, owner of RE Construction and son-in-law of Smith.

33. Smith's disclosure of the unlawfully-obtained Athena Files to RE Construction personnel is demonstrated in the use of the Hard Drive by RE Construction to store its own business files and data up to April 2, 2018.

34. In addition, on February 14, 2020, when Smith surrendered the Hard Drive to Athena pursuant to resolution of the Conversion/Detinue Action, the Hard Drive showed that it had been accessed as recently as February 13, 2020.

35. Accordingly, RE Construction had access to the Athena Files for a period of over four years while in direct competition with Athena as a construction contractor and unlawfully benefited from the confidential, secret, and proprietary information contained therein.

36. Moreover, at the time that Smith disclosed the Hard Drive to and shared the Athena Files with RE Construction personnel, Athena and RE Construction were engaged in active litigation in the form of binding arbitration, arising out of a business dispute concerning an Athena contract with the U.S. Department of Defense for which RE Construction had been a subcontractor.

37. Upon information and belief, Smith and RE Construction—Smith's employer and whose owner, Ralph Ellis, is Smith's son-in-law and cohabitant—conspired, combined, associated, agreed, mutually undertook, and acted in concert together to trespass upon, invade, and access Athena's computers and/or computer networks.

38. Defendants' conduct and actions described above have damaged Athena in an amount to be proven at trial but in excess of \$66,000.

39. Defendants' conduct and actions described above were intentional, willful, wanton, malicious, oppressive, and in total disregard for the rights of Athena.

**COUNT I**  
**Computer Trespass**  
**Va. Code § 18.2-152.4**  
**(against Defendant Smith)**

40. Athena incorporates the allegations of Paragraphs 1 through 39 as if fully restated herein.

41. By the actions described above, Defendant Smith trespassed upon, accessed, and used Athena computers and/or computer networks without authority to make or cause to be made an unauthorized copy of computer data—namely, the Athena Files—residing in, communicated by, or produced by Athena's computers in violation of Va. Code § 18.2-152.4.

42. Athena is entitled to the relief provided in Va. Code § 18.2-152.12, including damages sustained and the costs of suit.

43. Defendant Smith's unauthorized and unlawful conduct and actions described above have damaged Athena in an amount to be proven at trial but in excess of \$66,000.

**COUNT II**  
**Computer Invasion of Privacy**  
**Va. Code § 18.2-152.5**  
**(against all Defendants)**

44. Athena incorporates the allegations of Paragraphs 1 through 43 as if fully restated herein.

45. By the actions described above, Defendants invaded, accessed, and used Athena computers and/or computer networks without authority and intentionally examined, without authority, financial and/or identifying information contained in the Athena Files in violation of Va. Code § 18.2-152.5.

46. Defendants knew or reasonably should have known that they had no right, agreement, or permission to examine the Athena Files because of the confidential, secret, and proprietary content of the Athena Files; because the Athena Files were contained on a hard drive in use by RE Construction, an Athena competitor; and because Smith had unlawfully trespassed upon, invaded, and accessed Athena's computers and/or computer networks on January 25, 2016, and February 15, 2016, for the purpose of copying the Athena Files to the Hard Drive then in his possession.

47. Athena is entitled to the relief provided in Va. Code § 18.2-152.12, including damages sustained and the costs of suit.

48. Defendants' unauthorized and unlawful conduct and actions described above have damaged Athena in an amount to be proven at trial but in excess of \$66,000.

**COUNT III**  
**Business Conspiracy**  
**Va. Code §§ 18.2-499 and 18.2-500**  
**(against all Defendants)**

49. Athena incorporates the allegations of Paragraphs 1 through 48 as if fully restated herein.

50. Defendants conspired, procured, directed, participated in, caused, and otherwise engaged in the actions described in Count II, above.

51. Defendants are two or more persons who combined, associated, agreed, mutually undertook or acted in concert together within the meaning of Va. Code § 18.2-499.

52. Defendants acted intentionally, willfully, and maliciously to injure Athena in its reputation, trade, business, or profession in total disregard for the rights of Athena.

53. Athena has been damaged by Defendants' wrongful conduct, as described above, and is therefore entitled to the relief provided by Va. Code §§ 18.2-499(A) and 18.2-500, including actual damages in an amount to be proven at trial but in excess of \$66,000, costs, and reasonable attorneys' fees.

**COUNT IV**  
**Common Law Conspiracy**  
**(against all Defendants)**

54. Athena incorporates the allegations of Paragraphs 1 through 53 as if fully restated herein.

55. Defendants conspired, procured, directed, participated in, caused, and otherwise engaged in the actions described in Count II, above.

56. Defendants are two or more persons who combined to accomplish the unlawful purposes described above by concerted action.



57. Defendants acted intentionally, willfully, and maliciously to injure Athena in its reputation, trade, business, or profession in total disregard for the rights of Athena.

58. Defendants' unauthorized and unlawful conduct and actions described above have damaged Athena in an amount to be proven at trial but in excess of \$66,000, costs, and reasonable attorneys' fees.

### **PRAYER FOR RELIEF**

WHEREFORE, Athena respectfully requests that this Court enter judgment in its favor and against Defendants and prays that this Court:

- 1) Award damages in an amount to be proven at trial but in excess of \$66,000;
- 2) Award the costs of this action and reasonable attorneys' fees and expenses;
- 3) Award pre-judgment and post-judgment interest;
- 4) Grant such other and further relief as the Court should deem just.

### **JURY DEMAND**

Athena hereby demands a trial by jury on all issues for which a trial by jury may be had.

Dated: March 1, 2021

Respectfully submitted,

Athena Construction Group, Inc.  
By Counsel



Milton C. Johns, VSB No. 42305  
Craig A. Guthery, VSB No. 42821  
Executive Law Partners PLLC  
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